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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,160	03/30/2001	Matthew Bondy	33477US1	6295
116	7590	11/22/2005	EXAMINER	
PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			RHODE JR, ROBERT E	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/822,160

Applicant(s)

BONDY, MATTHEW

Examiner

Rob Rhode

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 44-66 is/are pending in the application.
- 4a) Of the above claim(s) 55-66 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 44-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Applicant amendment of 8-18-05 canceled claims 1 – 43 and added new claims 44 - 66 as well as traversed rejections of Claims 1- 43.

Currently, claims 44 - 66 are pending.

Newly submitted claims 44 – 66 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The newly added claims after further consideration were Restricted because of being classified in different classes, which will increase the examination burden for the Examiner.

Specifically,

- I. Claims 44 - 54, drawn to a method of promoting and selling items with affinity web site creation, classified in class 709, subclass 218.
- II. Claims 55 - 63, drawn to method of promoting and selling items with business system serving instructions to members including name of affinity organization and information describing the affinity organization and performs the method for a plurality of additional affinity groups, classified in class 705, subclass 80.
- III. Claims 64 - 66 drawn to a method of promoting and selling items with e-tailing web site and a desired template as well as a desired domain name as well as purchase, classified in class 705, subclass 26.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 55 - 66 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The requirement is deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 44 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In Claim 44, the word "representing" is a relative word, which renders the claims indefinite. The word "representing" is not defined by the claim(s), the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. For examination purposes, the word "representing" will be treated as the e-tailing/online site representing the affiliate site, which provide the "look and feel" to the device accessing and thereby appear to the device as just another page of the Affinity/Affiliate web site.

Claim 46 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

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regards as the invention. For example, the claims extensive use of alternative such as "or" language in combination with the word "both" makes determining the metes bounds of the claim almost impossible.

In addition, Claims 47 and 49 recites the limitation "business system" in these claims. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 44, 45, 47 – 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over “Kinzan Announces Siteman and Siteman StoreFront to Create Networks of Local E-Commerce Web Sites”; Business Editors and High Tech Writers; Business Wire; Aug 31, 1999 and “ System aims to ease path for Web Hosting”; Carol Silwa; Computerworld; Aug 30, 1999 as well as screen captures via archive.org of Kinzan.com (hereafter collectively referred to as “Kinzan”) in view of “kinzan.com and Commission Junction Partner to Help E-Communities Successfully “Build and Grow”; PR Newswire; Feb 1, 2000 and screen captures via archive.org of cj.com (hereafter collectively referred to as “Commission Junction”) .

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Regarding claim 44 (new), Kinzan teaches a method of promoting and selling items, comprising the steps of:

serving instructions over a communication network for providing affinity-website creation information, providing said affinity-website creation information and sending said creation information over the communications network in response to said requesting, said creation information including information describing an affinity organization; automatically generating, based on said creation information an affinity website such that said affinity website operates as a website representing the affinity organization (see at least pages 1, 3, 4 and 8).

While Kinzan discloses providing e-tailing sites for affiliate/affinity websites, the reference does not specifically disclose a method for providing an e-tailing website with embedding of a hyperlink of e-tailing site into an affiliate web page and serving pages to device, which appear to be the e-tailing website representing the affinity group and processing orders.

On the other hand and in the same are of providing e-tailing web sites with hyperlinks, Commission Junction teaches a method for providing an e-tailing website comprising a plurality of e-tailing web pages containing a plurality of items for sale (see at least); automatically embedding a hyperlink to one or more of said e-tailing web pages in one or more of said affinity website web pages; serving said affinity website web pages to one or more of plurality of devices connected to said communications network

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serving said e-tailing web pages to the one or more of the devices when user of the devices access said e-tailing web pages via said hyperlink, wherein said e-tailing web pages are then displayed on said devices utilizing said creation information; such that said e-tailing web pages appear to be an e-tailing website representing the affinity organization; receiving and processing orders for purchasing one or more of said items (see at least pages 1 – 2, 4 and 5).

It would have been obvious to have provided the method of Kinzan with method of Commission Junction to have enabled the method as recited in claim 44. Kinzan an online web site affiliate creating method discloses the functions of serving, providing and automatically creating affiliated websites (see at least pages 1 and 2). In turn, Commission Junction discloses a method for proving an e-tailing site with hyperlinks embedded in Affiliate WebPages and serving up e-tailing site pages when accessed (see at least Pages 1 and 2). Therefore, one of ordinary skill would have been motivated to extend the method of Kinzan with a method for including a plurality of affinity website web pages based on said information. In this manner, both the Affinity site as well as the e-tailing site will benefit from lower cost and increasing revenue with the additional access by user devices for additional interactions such as a potential purchase.

Please note and for examination purpose, Affiliate was treated as equivalent to Affinity.

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Regarding Claim 45 (new), Kinzan teaches a method wherein said instructions include a description of a plurality of website templates from which to choose, wherein a website template includes:

- one or more page content areas (page 6);
- one or more navigations; and
- one or more hyperlinks to said e-tailing website.

Regarding Claim 47 (new), Kinzan teach a method, wherein a business system performs said method for a plurality of additional affinity groups for providing each of said additional affinity groups with a corresponding affinity group website and a corresponding customized view of said e-tailing website web pages according to the method (Page 1 and 2).

Regarding Claim 48 (new), Kinzan teaches a method, wherein said creation information includes a desired domain name (page 14).

Regarding Claim 49 (new), Kinzan teaches a method, wherein said business system comprises a webserver for performing said serving steps (page 2).

Regarding Claim 50 (new), Kinzan teaches a method, wherein said creation information includes a desired domain name (page 14).

Regarding claim 51 (new), Kinzan teaches a method, wherein one or more of said items are products marketed as being affiliated with and provided by said affinity organization (pages 1 – 3).

Claim 46 rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Kinzan and Commission Junction as applied to claim 44 above, and further in view of Ross (US 2004/0148366 A1).

The combination of Kinzan and Commission Junction substantially disclose and teach the Applicant's invention.

While it is implicit that Kinzan as well as Commission Junction would provide an updating feature, the references do not specifically disclose an update feature.

On the other hand and in the same analogous art of Affiliate/Affinity websites for promoting and selling items and regarding Claim 46 (new), Ross teaches a method, further providing the step of providing an update feature, wherein update information is provided, via said communication network, such that one or both of one or more pages of said affinity website web pages and one or more pages of said e-tailing website web pages as displayed are updated using said update information (Para 0302).

It would have been obvious to one of ordinary skill in the art to have provided the combination of Kinzan and Commission Junction with a method for providing an update feature. The combination of Kinzan and Commission Junction disclose the claim limitations of claim 44. In turn, Ross discloses an update feature (Para 0302). Thereby, one of ordinary skill in the art would have been motivated to extend the combination with an update feature, which will ensure the website stays current.

Claims 52 – 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Kinzan and Commission Junction as applied to claims 44 and 51 above, and further in view of Yamada (US 6,336,100 B1).

The combination of Kinzan and Commission Junction substantially disclose and teach the Applicant's invention.

However, the combination does not specifically disclose and teach a method wherein said one or more items are for pickup by the one or more of said users who purchased said items at a location provided by the affinity organization; wherein said one or more items are sent to a location provided by the affinity organization for pickup by the one or more of said users who purchased said items; wherein a plurality of said items purchased by different ones of said users are packaged together for shipping to said location for pickup by said different ones of said user;, wherein said one or more items are for pickup by the one or more of said users who purchased said items at a location

provided by the affinity organization; and wherein said one or more items are sent to a location provided by the affinity organization for pickup by the one or more of said users who purchased said items.

On the other hand and in the same area of promoting and selling items that includes shipping and regarding claim 52, Yamada teaches a method, wherein said one or more items are for pickup by the one or more of said users who purchased said items at a location provided by the affinity organization (see at least Abstract and Figure 9).

Regarding claim 53 (new), Yamada teaches a method, wherein said one or more items are sent to a location provided by the affinity organization for pickup by the one or more of said users who purchased said items (Abstract, Col 2, lines 53 - 56 and Figure 9).

Claim 54 (new), Yamada teaches a method, wherein a plurality of said items purchased by different ones of said users are packaged together for shipping to said location for pickup by said different ones of said users (Abstract and Figure 9).

It would have been obvious to one of ordinary skill to have provided the combination of Kinzan and Commission Junction with a method for providing the sending and picking up of items at a location. The combination discloses the claim limitations of claim 44. In turn, Yamada teaches for providing the sending and picking up of items at a location (Abstract, Col 2, lines 53 – 56 and Figure 9). Therefore, one of ordinary skill in the art

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would have been motivated to extend the combination with a method for providing the sending and picking up of items to a location, which is analogous with shipping.

Response to Arguments

Applicant's arguments with respect to claims 1 - 43 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Rob Rhode** whose telephone number is **571.272.6761**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **571.272.7159**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

571-273-8300

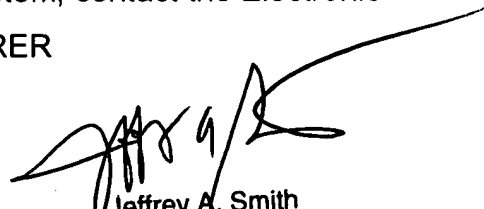
[Official communications; including
After Final communications labeled
"Box AF"]

For general questions the receptionist can be reached at
571.272.3600

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Jeffrey A. Smith
Primary Examiner